



DEVELOPMENT CONTROL COMMITTEE

27th January 2009

Report of Head of Planning and Building Control

25 High Street, Walsall Wood.

1.0 PURPOSE OF REPORT

To request authority to take planning enforcement action in respect of a hot food takeaway shop and its cooking fume extraction flue.

2.0 RECOMMENDATIONS

- 2.1 That authority is granted for the issuing of enforcement notices under the Town and Country Planning Act 1990 (As Amended), to require remedial actions to be undertaken as shown below in 2.3.
- 2.2 To authorise that the decision as to the institution of Prosecution proceedings, in the event of non-compliance with an Enforcement Notice, or the non-return of Requisitions for Information or a Planning Contravention Notice, and the decision as to the institution of Injunctive proceedings, in the event of a continuing breach of control, be delegated to the Assistant Director - Legal and Constitutional Services.
- 2.3 That, in the interests of ensuring an accurate and up to date notice is served, authority be delegated to the Assistant Director - Legal and Constitutional Services in consultation with the Head of Planning and Building Control to amend, add to, or delete from the wording set out below stating the nature of the breach(es) the reason(s) for taking enforcement action, the requirement(s) of the Notice, or the boundaries of the site :

Details of the Enforcement Notice(s)

The Breaches of Planning Control:-

Operational development comprising the installation of an external fume extraction flue.

Change of use to a hot food takeaway shop, without implementing planning permission 06/0819/FL, (granted for change of use to hot food takeaway on 14th August 2006), by reason of failure to comply with a pre-commencement condition attached to the permission.

Steps required to remedy the breaches:-

Dismantle the fume extraction flue, and brick up the opening on the side of the building with bricks and mortar to match that existing.
Remove all resultant components and debris from the land.

Cease to use the premises as a hot food takeaway shop, and remove all equipment connected with this use.

Period for compliance:-
3 months.

Reasons for taking Enforcement Action:-

By reason of its size, appearance, and location very close to and in front of a window at the adjacent premises, the fume extraction flue is harmful to the visual amenities of the area, and also harmful to the quality of outlook enjoyed at the adjoining premises 23 High Street. Its retention would therefore be contrary to policies GP2, ENV32 and S10 in the Walsall Unitary Development Plan (2005).

The continued use of the premises as a hot food takeaway shop without an acceptable flue for dispersing cooking fumes would be likely to expose neighbouring premises to nuisance from cooking odours. The use is therefore contrary to policies GP2 and S10 in the Walsall Unitary Development Plan (2005).

3.0 FINANCIAL IMPLICATIONS

None arising from the report.

4.0 POLICY IMPLICATIONS

The report recommends enforcement action in order to seek compliance with planning policies.

5.0 LEGAL IMPLICATIONS

None arising from the report.

6.0 EQUAL OPPORTUNITY IMPLICATIONS

None arising from this report.

7.0 ENVIRONMENTAL IMPACT

The report seeks enforcement action to remedy adverse environmental impacts.

8.0 WARD(S) AFFECTED

Aldridge North and Walsall Wood

9.0 CONSULTEES

Related planning application 06/0819/FL was subject to normal publicity.

10.0 CONTACT OFFICERS

James Fox / Philip Wears

Planning Enforcement Team: 01922 652527 / 01922 652411

11.0 **BACKGROUND PAPERS**

Planning permission file 06/0819/FL
Enforcement file not published.

David Elsworthy
Head of Planning and Building Control

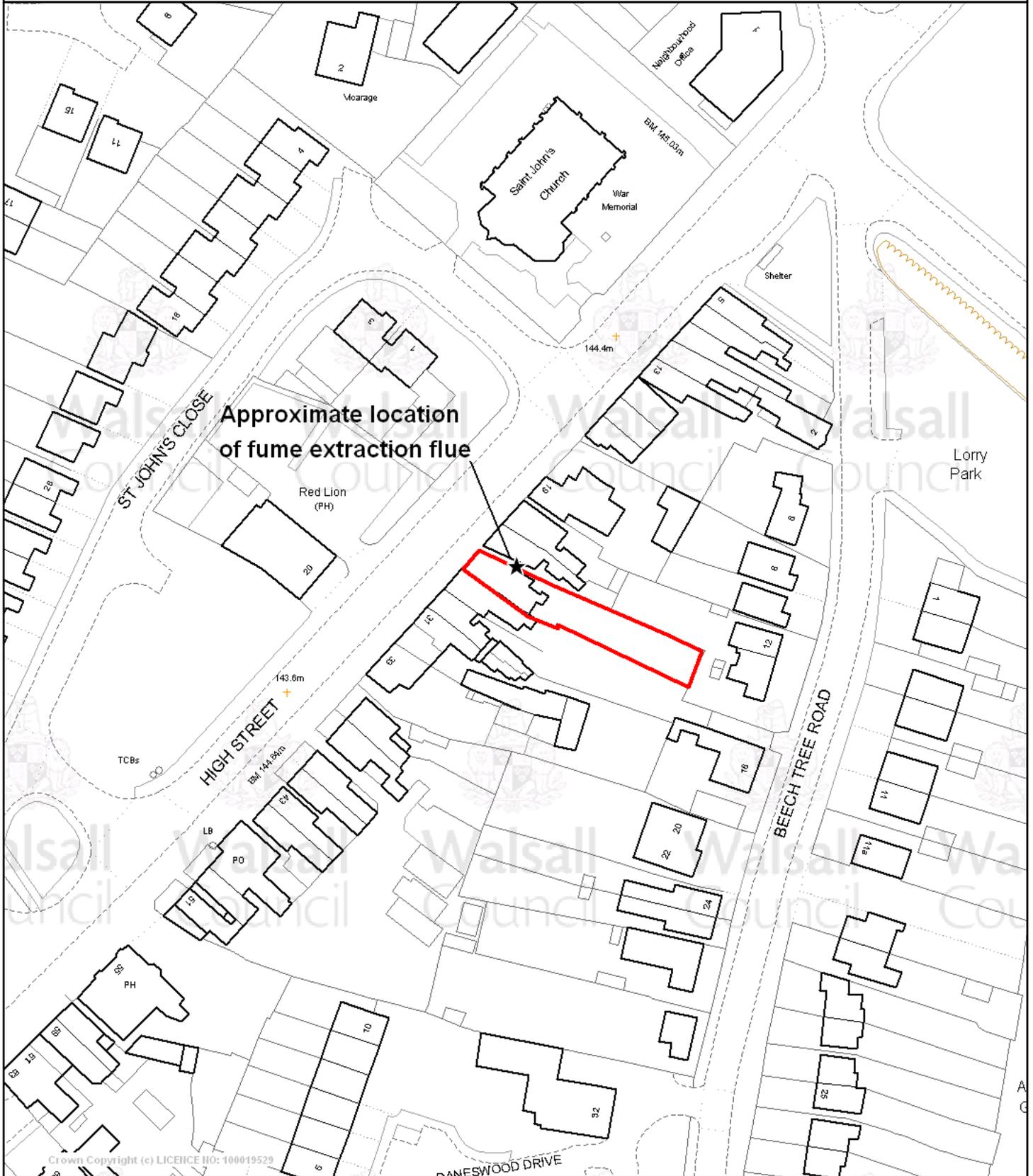
Development Control Committee
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12 BACKGROUND AND REPORT DETAIL

- 12.1 Number 25 High Street is an end of terrace premises in use on the ground floor as a hot food takeaway shop. It is located in a generally retail frontage, but at the rear is a residential area. There is also a hot food takeaway adjacent at number 23 High Street, which appears to have been established following a permission granted in 1982.
- 12.2 A narrow private alley separates the gable walls of numbers 23 and 25 High Street. In the alley the cooking fume extraction flue subject of this report has been installed. There is also the fume extraction flue for number 23 High Street, but this is very much smaller and is not in breach of planning control. A plan showing the location of number 25 and its flue is attached to this report.
- 12.3 The planning permission for the change of use at number 25 to a hot food takeaway shop was granted on 14th August 2006, subject to planning conditions. One 'pre-commencement' condition required details of the fume extraction flue to be approved before it was installed and before the takeaway use commenced. (The details required were its siting, design, appearance and vibration control measures, and requirements regarding its painting and height were also included.) The applicant submitted some information to resolve this condition but not all of the necessary details were received. The takeaway use then commenced and an extraction flue was installed, without compliance with the condition.
- 12.4 The flue installed has an unpainted galvanised steel finish and a large diameter. It partly obstructs the daylighting and opening of a window in the gable wall of number 23. (This is referred to below at more length.) Various approaches were made to the company running the takeaway, seeking details of a modified flue which would avoid problems with the window. The information submitted included re-locating the flue by about 0.9 metres to avoid the window, However, the details remained incomplete and contrary to the painting requirement, and they could not be approved. The applicant company then left the premises, and new tenants took over, though with the problems of the planning condition and the flue being unresolved.
- 12.5 Given this sequence of events officers reviewed the situation and concluded:-
- it has become accepted in planning case law that, in the case of conditions requiring additional details to be submitted and approved before the development can be undertaken, if the condition is not complied with the planning permission has not been implemented. The whole development is therefore unauthorised and vulnerable to an Enforcement Notice.
 - In this case, as the flue installed had not been approved under the condition, both the change of use and the flue lack planning permission, and are vulnerable to an Enforcement Notice.
 - Court cases have established what a developer can do to correct matters. In this case if the owners or present tenant were to retrospectively obtain approval for the necessary details, and then implement them, that would re-instate the planning permission given.

- If they take no action, the use and the flue remain unauthorised.
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- 12.6 Further details have subsequently been submitted by the present tenant, but in considering whether to approve these using the normal delegated powers, officers have judged the proposed details as unsatisfactory.
- 12.7 For any proposed details to be satisfactory there are two problems with the existing flue which need to be overcome. Firstly there is its relationship to the window at number 23. The flue is vertical and has a very large diameter of approximately 0.6 metre. The flue is directly in front of the narrow but tall window in the gable end of number 23, and the window has an opening section. In an alley only about 0.95 metres wide, the flue is only about 0.25 metres from the window. The flue therefore obstructs the daylighting to the window, and physically limits the extent to which it can be opened. Secondly, although the location of the flue in the alley results in it only having a narrow range of visibility, its large diameter and its unpainted galvanised steel finish make it an unsightly feature, particularly when viewed at close range from High Street.
- 12.8 The details as most recently submitted propose that the flue retains this large diameter and emerges at the same point through the wall, but is diverted horizontally for about 1.1 metres before turning vertical. The flue would remain in the alley but further to the rear. Modified in this way the flue would no longer limit the opening of the window, but officers consider that in view of its diameter it would substantially reduce light levels in the alley and would therefore continue to detract from the value of the window. Information on the mitigation of vibration is also needed because there is a flat above the takeaway, but this is still lacking, as is information on it being painted. This has been explained to the tenant but no further details have been forthcoming. Officers recommend that an enforcement notice is served to require the removal of the flue.
- 12.9 In relation to the unauthorised use as takeaway, officers consider it would be inappropriate for the use to continue without a satisfactory flue for dispersing cooking fumes. The removal of the existing unsatisfactory flue, in the present circumstances when there is no approval for a replacement, is particularly likely to lead to nuisance for neighbouring properties in terms of cooking odours. It is therefore justifiable to require the use to cease.
- 12.10 Whilst officers now recommend enforcement notices against the flue and the use as takeaway, if further proposals are received at this late stage, officers will also consider them and where possible advise.

25 High Street, Walsall Wood



Approximate location
of fume extraction flue



Walsall Council

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Scale 1/1000 Date 16/1/2009

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